



A Subsidiary of Textron Financial Corporation

430 MAIN STREET

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November 7, 2000

Larry L. Watson, Esq.
Squire, Sanders and Dempsey L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4441

Dear Mr. Watson:

This bid ("Bid") is submitted pursuant to Baptist Foundation of Arizona, Inc.'s Motion For Order Authorizing Sale of Companies' Beneficial Interests Outside The Ordinary Course of Business Under 11 U.S.C. § 363 Free and Clear Of Liens And (B) Applicable Bidding and Sale Procedures ("Motion"). Litchfield Financial Corporation or its assigns ("LFC") hereby bids pursuant to and in accordance with the terms of the Motion an amount equal to seventy-eight percent (78%) of the Outstanding Balance of the total "performing" land contract receivables as of the Closing Date. The Outstanding Balance of the "performing" land contract receivables contained in each subdivision trust shall be the total of the unpaid principal, accrued interest, late fees and delinquent property taxes outstanding as of the Closing Date. Performing land contract receivables is defined as those contracts on which the required monthly payment, as of the month-end prior to the Purchaser having submitted a bid subject to the Bankruptcy Court approving the sale, is not delinquent for more than twenty-nine (29) days, with the exception of those land contract receivables contained in Trusts 8239 and 8239A which are to be purchased on an as-is, performing and non-performing basis.

Additional terms of this Bid are contained in LFC's proposed Irrevocable Agreement For Sale of Beneficial Interest ("Proposed Purchase Agreement") attached hereto as Exhibit A and hereby incorporated by reference. The Proposed Purchase Agreement is substantially in the form of the agreement attached to the Motion as Exhibit B. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Proposed Purchase Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Thurston".

James A. Thurston
Vice President

IRREVOCABLE AGREEMENT FOR SALE OF BENEFICIAL INTEREST

THIS IRREVOCABLE AGREEMENT FOR SALE OF BENEFICIAL INTEREST (this "Agreement") is made and entered into by and between THE FOUNDATION COMPANIES, INC. and FOUNDATION MORTGAGE CORPORATION (collectively, the "Beneficiaries"), 1313 East Osborn Road, Suite 250, Phoenix, Arizona 85014 and LITCHFIELD FINANCIAL CORPORATION or its assigns, 430 Main Street, Williamstown, Massachusetts 01267 ("Purchaser").

1. **AGREEMENT TO SELL AND PURCHASE:** For the consideration described herein and subject to the terms and conditions set forth in this Agreement, and by virtue of its beneficial interest in certain subdivision trusts, Beneficiaries agree to issue instructions for the sale and assignment of their beneficial interests in all those certain subdivision trusts described herein, to FIRST AMERICAN TITLE INSURANCE COMPANY (hereinafter referred to as "Trustee"), for conveyance to Purchaser of all the Beneficiaries' rights, title and interests in said subdivision trusts as contained in the Trust Agreements by and between Beneficiaries and Trustee as set forth on Schedule "B" attached hereto, and hereinafter referred to as "the Property."

2. **PURCHASE PRICE:** The purchase price to be paid for the Property shall be the amount to be calculated on the Closing Date, pursuant to the formula set forth on Schedule "A" hereto. The purchase price shall equal seventy-eight percent (78%) of the Outstanding Balance (hereinafter defined) of the total "performing" land contract receivables as of the "Closing Date" (hereinafter defined). The Outstanding Balance of the "performing" land contract receivables contained in each subdivision trust shall be the total of the unpaid principal, accrued interest, late fees and delinquent property taxes outstanding as of the Closing Date. The Closing Date is defined as on, or before, the thirtieth (30th) day following the entry of an order by the United States Bankruptcy Court for the District of Arizona approving the sale provided for herein, but in no event shall such date extend beyond December 15, 2000 without the mutual written agreement of Purchaser and Beneficiaries as set forth in paragraph 11(m) of this Agreement. In the event the thirtieth day falls on a Saturday, Sunday or legal holiday, the Closing Date shall be the next business day that is not a Saturday, Sunday or legal holiday. By written agreement of the parties hereto, the Closing Date may be extended for one thirty (30) day period. Performing land contract receivables is defined as those contracts on which the required monthly payment, as of the month-end prior to the Purchaser having submitted a bid subject to the Bankruptcy Court approving the sale, is not delinquent for more than twenty-nine (29) days, with the exception of those land contract receivables contained in Trusts 8239 and 8239A which are to be purchased on an as-is, performing and non-performing basis. Furthermore, the land contract receivables which become delinquent for more than twenty-nine (29) days after the date the Purchaser submitted a bid shall be considered as "performing."

3. **DUE DILIGENCE PERIOD:** The due diligence period is that period of time beginning with the date on which the Purchaser has signed a confidentiality agreement and ending with the date of signing of this Agreement by the Purchaser.

4. **REPRESENTATIONS, OBLIGATIONS AND WARRANTIES OF BENEFICIARIES:** Beneficiaries hereby represent and warrant to Purchaser as of the Closing Date as follows:

(a) **Organization:** Beneficiaries are corporations or other entities, duly organized, validly existing and in good standing under the laws of the State of Arizona, with the full corporate and/or organizational power and authority to execute, deliver and perform this Agreement and any other conveyance, transfer or instrument necessary to complete this transaction and to carry on its business as presently conducted.

(b) **Authorization:** The execution, delivery and performance of this Agreement by the Beneficiaries and the consummation by the Beneficiaries of the transactions contemplated hereby must be fully authorized and approved by the Restructuring and Creditor Committees of the Beneficiaries and the Court of the United States Bankruptcy Court for the District of Arizona.

(c) **Validity:** This Agreement has been duly executed and delivered by the Beneficiaries and constitutes the legal, valid and binding obligation of the Beneficiaries, enforceable against the Beneficiaries in accordance with its terms subject to Paragraph 11(m) herein.

(d) **Rights, Title and Interests:** Beneficiaries hold good and marketable to the beneficial interests being sold and assigned hereby, free and clear of all claims, liens, encumbrances, assignments, reservations and restrictions, provided, however, that Beneficiaries hereby covenant and agree to remove all encumbrances on or before the Closing Date.

(e) **Land Contract Receivable Files:** The land contract receivable files to be delivered on the Closing Date to Purchaser or its agent in connection with this transaction will be true, correct and complete, to the best of Beneficiaries' knowledge and will contain copies of all documents concerning the Property.

5. **REPRESENTATIONS AND WARRANTIES OF PURCHASER:** Purchaser hereby represents and warrants to the Beneficiaries as of the Closing Date:

(a) **Organization:** Purchaser is a corporation, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, with full corporate power and authority to execute, deliver and perform this Agreement and to carry on its business as presently conducted.

(b) **Authorization:** The execution, delivery and performance of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby has been fully authorized, subject to the terms and conditions of this Agreement.

(c) **Funding:** Purchaser has provided an earnest money deposit of \$953,000, the "Earnest Money". On the Closing Date, the Earnest Money and any interest accrued thereon shall be credited toward the purchase price. The Earnest Money shall be non-refundable if Purchaser fails to close the sale for any reason, except for non-performance hereunder by the Beneficiaries, the failure of the contingencies set forth in Paragraph 7 hereof to be satisfied or the non-approval of the transfer by the bankruptcy court. Except as otherwise provided in this Agreement, in the event of Purchaser's failure to close the sale, retention of the Earnest Money by the Beneficiaries shall be the Beneficiaries' sole and exclusive remedy and Purchaser shall have no further rights and liabilities hereunder. The balance of the purchase price in cash or, after taking into account the Earnest Money and any interest accrued thereon, shall be

deposited into escrow no later than 5:00 p.m. MST on the last business day prior to the Closing Date.

6. **CLOSING OF ESCROW:** The sale and assignment of beneficial interest to the Purchaser shall be consummated on or before the Closing Date as defined in Paragraph 2 herein. Any extension of the Closing Date must be approved in writing by the parties hereto.

7. **ITEMS TO BE DELIVERED PRIOR TO CLOSING:** The Purchaser's obligation to close the sale is contingent upon the following (a) the Beneficiaries, as the sole cost and expense of the Purchaser, causing title commitments to be issued by Trustee to be delivered to the Purchaser no later than fifteen (15) days prior to the Closing Date for A.L.T.A. owner's standard policies of title insurance setting forth the title policy amount covering the Outstanding Balance of the land contract receivables included in this Agreement and insuring the beneficial interests identified on Schedule "B" attached hereto; (b) Not less than fifteen (15) days prior to the Closing Date, the Trustee, fee owner of the real property that constitutes the rest of the subject trusts identified on Schedule B shall provide the Buyer with commitments to issue A.L.T.A. fee title of the subject property upon collapse of the trusts to occur simultaneously with the Closing. Inasmuch as it is the intent of the Purchaser to collapse the underlying trusts identified on Schedule B; on or before [DATE], Purchaser shall cause to be opened a second escrow account with the Trustee, fee owner for the purpose of collapsing the trusts simultaneously with the Closing. On or before [DATE], Purchaser shall cause to be executed specific escrow instructions identifying and ordering all such commitments and documents as Purchaser will require to close the second escrow simultaneously with the Closing. All documents and commitments requested shall be commercially reasonable and comply with the laws of the State of Arizona. No less than fifteen (15) days prior to Closing, Purchaser shall cause to be deposited into the second escrow, all documents and commitments necessary to close the second escrow. Only the Trustee, fee owner's failure to timely provide the documents and commitments requested in the letter of instruction establishing the second escrow between the Purchaser and Trustee, fee owner shall constitute an event allowing the Purchaser to obtain a refund of the Earnest Money Deposit provided for in paragraph 5(c) of this Contract, less all fees, costs and charges of the Trustee incurred by Beneficiaries pursuant hereto. All costs and expenses associated with the Purchaser's proposed second escrow shall be the sole responsibility of the Purchaser.

8. **ITEMS TO BE DELIVERED AT CLOSING:** At Closing, the parties to this Agreement shall deliver or cause to be delivered the following:

(a) Beneficiaries, at their sole cost and expense, shall cause to be delivered to escrow, recordable Transfer and Assignments of Beneficiaries' beneficial interest in the land contract receivables to the Purchaser.

(b) Beneficiaries and Purchaser shall execute at closing, and shall attach as Schedule "A" of this Agreement, a "Purchase Price Schedule" containing the exact Outstanding Balance of the Property for final determination of the purchase price and settlement amount. Said Outstanding Balance shall be provided and certified by the Servicing Agent herein.

9. **ITEMS TO BE DELIVERED AFTER CLOSING:** All original recorded closing documents executed in association with this assignment and purchase must be delivered to the Purchaser, in their proper recorded form, within thirty (30) business days after Closing. If

required documentation cannot be delivered to Purchaser within thirty (30) business days, it will be the responsibility of the Purchaser to obtain written explanation from Trustee.

10. **RELEASE OF SERVICING:** Beneficiaries agree that in relation to the transfer of servicing:

(a) Beneficiaries agree and acknowledge that the servicing obligation for the Property described herein is currently established with First American Title Insurance Company (the "Servicing Agent"), 4801 East Washington Street, Suite 200, Phoenix, Arizona 85034. On Close of Escrow, Beneficiaries shall assign their positions in all servicing agreements related to the Property, if applicable, to the Purchaser.

(b) Beneficiaries will advise and instruct the Servicing Agent that any funds collected from and after the Closing Date shall be the property of the Purchaser.

11. **MISCELLANEOUS:** Beneficiaries and Purchaser hereby agree as follows:

(a) **Further Assurances:** The parties agree that from time to time hereafter, upon request, each of them will execute, acknowledge and deliver such other documents and instruments, and take such further action as may be reasonably necessary to carry out the intent of this Agreement.

(b) **Modification:** No term or provision contained herein may be modified, amended, or waived except by written agreement or consent signed by the party to be bound thereby.

(c) **Waiver:** No waiver of a breach or violation of any term or provision of this Agreement shall operate or be construed as a waiver of any subsequent breach or limit or restrict any right or remedy otherwise available.

(d) **Entire Agreement:** This document constitutes the entire Agreement of the parties and supercedes any and all other prior agreements, oral or written, with respect to the subject matter contained herein. There are no representations, warranties, covenants or other agreements, oral or written, between the parties or their employees, agents or any third party in connection with this transaction, other than those expressly set forth herein.

(e) **Incorporation by Reference:** All schedules referred to in this Agreement shall be deemed incorporated herein by any reference thereto as if fully set out.

(f) **Governing Law:** This Agreement shall be subject to and governed by the laws of the state of Arizona, without regard to principles of conflicts of laws.

(g) **Fees of Legal Counsel:** In the event either party to this Agreement shall employ legal counsel with respect to any breach of the Agreement, the prevailing party shall have the right to recover from the other party all of its reasonable attorney's fees and out of pocket costs and expenses awarded by the court in connection therewith.

(h) **Joint Preparation:** This Agreement shall be deemed to have been prepared jointly by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against either party by reason of its drafting of this Agreement, but shall be

interpreted according to the application of the general rules of interpretation for arm's length transactions.

(i) **Arm's Length Transaction:** This Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters dealt with in this Agreement.

(j) **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(k) **Authority:** Each individual signing this Agreement in the representative capacity acknowledges and represents that he/she is duly authorized to execute this Agreement in such capacity in the name of, and on behalf of, the designated corporation, partnership, limited liability company, trust or other entity or individual.

(l) **Broker:** Each party has acted independently and on its own behalf with respect to the sale and purchase of the beneficial interests in the subdivision trusts contemplated hereby. No third party Broker has provided any information or documents to either party that has been relied upon by either party in making its decision to either purchase or sell the beneficial interests in the subdivision trusts.

(m) **Bankruptcy Court Approval:** This Agreement is subject to approval by the United States Bankruptcy Court for the District of Arizona. Beneficiaries covenant and agree that they will diligently and in a timely manner seek to obtain an Order of the Bankruptcy Court approving this Agreement and the sale of their beneficial interests thereunder as a properly noticed sale, not in the ordinary course, free and clear of liens and other interests and encumbrances (excepting only the interests created by the applicable land contracts) (the "Bankruptcy Order"). Anything contained in this Agreement to the contrary notwithstanding, in the event the sale fails to close on or before December 15, 2000 through no failure of Purchaser to satisfy the conditions stated herein, this Agreement shall terminate; provided, however, that Purchaser and Beneficiaries may mutually elect, in their sole and absolute discretion, to extend such date for a period mutually agreed upon in writing. If this Agreement terminates as provided above, with the exception of all fees, costs and charges incurred in connection with the second escrow, Purchaser shall have no further liability hereunder and Trustee is hereby instructed to immediately disburse to Purchaser the Earnest Money and all accrued interest thereon, together with the previous \$5,000 security deposit paid by Purchaser. Purchaser acknowledges and understands that the sale of the beneficial interests is subject to higher and better offers at the time of the Bankruptcy Court sale, and that the Beneficiaries have a duty, and will support the highest and best offer at the time of sale. In the event the beneficial interest is sold at the Bankruptcy Court for a higher and better offer, Purchaser's sole remedy shall be the immediate return of the Earnest Money and all accrued interest thereon, together with the previous \$5,000 security deposit and any other funds held in escrow by Trustee, less any and all fees and charges of Trustee.

(n) **Cost of Closing:** Purchaser and Beneficiaries shall divide equally the costs of closing including escrow and recording fees and costs. All costs related to or associated with title insurance, trust management fees, brokerage commissions, if applicable, due diligence costs, and professional fees of the Purchaser, including accounting and legal fees and costs, shall be the sole responsibility of the Purchaser.

(o) **Where is as is:** Beneficiaries are selling and Purchaser is buying the Property in a "where is", "as is" condition without representation or warranty, express, implied, or otherwise, except as provided in Sections 4 and 5 herein.

EXECUTED by the parties hereto this ____ day of _____, 2000.

BENEFICIARIES:

The Foundation Companies, Inc.

By: _____

Title: _____

PURCHASER:

Litchfield Financial Corporation

By: _____

Title: _____

Foundation Mortgage Corporation

By: _____

Title: _____

SCHEDULE "A"

PURCHASE PRICE SCHEDULE

For

ASSIGNMENT OF BENEFICIAL INTEREST

Locations of Properties (Arizona Counties): Maricopa, La Paz, Yavapai, Yuma and Mohave.

Total Number of Land Contracts involved:_____

Total Outstanding Balance as of _____, 2000 (Closing Date) = \$_____

Percentage Amount of Outstanding Balance to be paid by Purchaser 78%

Total Outstanding Balance X 78% equals Total Purchase Price of \$_____

BENEFICIARY:

The Foundation Companies, Inc.

By:_____

Officer's Name:_____

Officer's Title:_____

PURCHASER:

Litchfield Financial Corporation

By:_____

Officer's Name:_____

Officer's Title:_____

BENEFICIARY:

Foundation Mortgage Corporation

By:_____

Officer's Name:_____

Officer's Title:_____

SCHEDULE "B"

**LIST OF TRUST AGREEMENTS BETWEEN BENEFICIARIES & FIRST AMERICAN
TITLE INSURANCE COMPANY AS TRUSTEE OF THE FOLLOWING TRUSTS**

- 8259 Dated: July 1, 1996
- 8050 Dated: December 1, 1993
- 8310 Dated: December 31, 1994
- 8239 Dated: May 6, 1996